

## CITY COUNCIL

### **Public Works Committee**

Monday, December 15, 2008 Agenda 5:00 p.m.

Committee Members: M. Goodman-Hinnershitz Chair, D. Sterner, S. Fuhs

COMMITTEE OF THE WHOLE
Tax Revenue Anticipation Note (TRAN) - D. Rauch

### **PUBLIC WORKS COMMITTEE**

- I. Update on Capital Projects
- II. East Ends Contract Update
- III. Bernhart's Park & Dam

Remediation of the Park property

- DEP order to drain the lake
- V. Update Storm Water Utility Fee
- VI. Define Goals for 2009

#### **MEMORANDUM**

TO: Council of the City of Reading

FROM: Douglas Paul Rauch, Esquire

RE: Tax and Revenue Anticipation Notes of the City of Reading

DATE: December 8, 2008

As you know, tax and revenue anticipation notes ("TRANs") are issued by municipal governments such as the City of Reading ( the "City") for the purpose of providing cash to fund the deficits that can exist in such municipal governments' general funds between the time that taxes are levied and the time that the revenues from such taxes are received. This mechanism of funding short term deficits prior to the receipt of taxes and other revenues is a common financing mechanism used throughout the Commonwealth of Pennsylvania (the "Commonwealth"). The City has utilized this cash flow tool in the past, as recently as 2007. In addition, prior to the time the TRAN proceeds are needed, the City may have the opportunity to invest certain proceeds of the TRAN for the purpose of obtaining a small return on such funds over and above the amount required to repay the TRAN.

Attached to this Memorandum is a draft Resolution for your consideration for adoption at the Monday, December 22, 2008, meeting of the Council of the City ("Council"). Although the Resolution does not include a dollar amount for the TRAN at this time, it is expected that the final amount will be at least \$ 6,000,000.00. A final form of Resolution will be distributed to you prior to the December 22<sup>nd</sup> meeting which Resolution will include the final amount calculated to be necessary to fund the anticipated initial general fund deficit.

The Resolution contains standard provisions required by the Local Government Unit Government Debt Act of the Commonwealth of Pennsylvania (the "Debt Act"), and certain other requirements with respect to federal income tax laws and regulations. In addition, the Resolution authorizes the acceptance of the purchase proposal of Wachovia Bank, National Association. The proposal will be attached to the final form of the Resolution to be considered by Council.

Although by law the Resolution and certain related certificates must be executed and filed with the Department of Community and Economic Development of the Commonwealth of Pennsylvania ("DCED"), under the law the City does not need the approval of the Commonwealth to issue the TRAN. The TRAN will be effective when these documents are filed with the Commonwealth and when DCED's acknowledgement of receipt of such documents is received by or on behalf of the City. In addition, the issuance of the TRAN by the City will not affect the borrowing capacity of the City.

It is anticipated that settlement for the TRAN will take place on January 2, 2009. In addition to the documents prepared for filing with the DCED, our office will prepare a number of required closing documents consisting of certificates, receipts and opinions. Chief among these is an opinion stating that the interest payable to the holder of the TRAN is free from taxation for federal and state income tax purposes. Obviously, timing is crucial to a successful consummation of this transaction. The attorneys at our office have a great deal of experience and expertise in these matters, and have successfully completed these transactions for the City in the past in a timely, responsive and efficient fashion.

It is important to note that this is a specialized transaction. Although the City Solicitor is well versed in general municipal matters, as with most municipal solicitors, municipal finance matters are almost universally outside of a municipal solicitor's area of expertise. In addition, financial institutions such as Wachovia Bank, National Association, generally will accept the so called "tax-free opinion" only from independent finance counsel, with a well recognized expertise in municipal finance. Consequently, the City Solicitor is effectively prevented from undertaking the necessary legal work even if the City Solicitor expressed his desire to do it.

### CITY OF READING BERKS COUNTY, PENNSYLVANIA

Tax and Revenue Anticipation Note Authorizing and Awarding Resolution

WHEREAS, the City of Reading, Berks County, Pennsylvania (the "City") anticipates the receipt during the 2009 fiscal year of taxes and other revenues as yet uncollected; and

WHEREAS, based on monthly estimates of its expected taxes, revenues and expenditures for the upcoming fiscal year, the City anticipates that its cash on hand at certain times during such fiscal year may temporarily be reduced to undesirably low levels; and

WHEREAS, the City is authorized, pursuant to the Local Government Unit Debt Act, as codified by the Act of December 19, 1996, P.L. 1158, No. 177 (the "Act"), to

borrow money from time to time in any fiscal year in anticipation of the receipt of current taxes and other revenues and to evidence such borrowing by the issuance and sale of tax and revenue anticipation notes; and

WHEREAS, Wachovia Bar	nk, National Association (the "Purchaser"), has
submitted a proposal to purchase	the City's tax and revenue anticipation note in the
aggregate principal amount of \$_	; and

WHEREAS, the City desires by the adoption of this Resolution to accept such proposal and authorize the issuance and sale of its tax and revenue anticipation note in accordance with the Act.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Reading (the "Council") as follows:

- 1. The City hereby authorizes the issuance of its Tax and Revenue Anticipation Note, Series of 2009, in an aggregate principal amount of \$\_\_\_\_\_\_ (the "Note"), in anticipation of the receipt of current taxes and revenues in the 2009 fiscal year.
- 2. The Note shall be issued as a registered note, in the denomination of \$\_\_\_\_\_\_, shall be dated the date of closing (currently anticipated to be January 2, 2009) and mature on December 31, 2009, shall bear interest (calculated on the basis of a 30/360-day year) at a fixed rate of interest of \_\_\_\_\_\_ percent (\_\_\_\_\_\_%). The Note shall be substantially in the form attached hereto as Exhibit A with such changes as the Mayor shall deem appropriate.
- 3. The principal of and interest on the Note shall be payable at maturity, in lawful money of the United States of America at the office of Wachovia Bank, National Association, in Reading, Pennsylvania, which is hereby appointed paying agent and registrar for the Note and sinking fund depositary and is hereinafter called the "Paying Agent."
- 4. The Note may not be prepaid in whole or in part at any time prior to maturity.
- 5. The proposal of the Purchaser presented to the Council this day to purchase the Note at a price of par (the "Note Purchase Proposal") is hereby accepted and approved, and the Note is hereby awarded to the Purchaser. In the event the sale is a negotiated sale, the Council hereby finds and determines, on the basis of all information available to the Council, that a private sale of the Note by negotiation is in the best financial interest of the City.
- 6. Any officer of the City is hereby authorized and directed to notify the Purchaser of the City's acceptance of the Note Purchase Proposal, to execute such acceptance on a duplicate original thereof, to deliver the same to the Purchaser and to file the original of the Note Purchase Proposal with the records of the City.

- 7. The Note shall be a general obligation of the City and shall be equally and ratably secured by the pledge of, security interest in, and a first lien and charge on, the taxes and other revenues to be received by the City during the period the Note will be outstanding, together with all proceeds thereof. Such pledge, lien and charge shall be fully perfected as against the City, all its creditors and all third parties from and after the filing of appropriate financing statements in accordance with the Uniform Commercial Code and Section 8125 of the Act. The execution and filing of such financing statements are hereby authorized and directed.
- 8. The City hereby establishes a sinking fund for the Note to be held by the Paying Agent in the name of the City but subject to withdrawal only by the Paying Agent. The City covenants and agrees to deposit in said sinking fund not later than December 31, 2009, the principal of and interest on the Note due on December 31, 2009. The Paying Agent shall, without further authorization, withdraw moneys from the sinking fund and apply such moneys to the payment of the principal of and interest on the Note.
- 9. The Mayor is hereby authorized and directed to execute in the name of, on behalf of, and under the seal of, the City, the Note in the form and containing the terms described above, and the City Clerk is hereby authorized and directed to attest the same. Such officers are hereby authorized and directed to deliver the Note to the Purchaser upon receipt of the proceeds thereof and upon compliance with all conditions precedent to such delivery required by the Act, this Resolution and the Note Purchase Proposal. Immediately upon receipt of the purchase price for the Note, the Mayor is authorized to make disbursements from the proceeds of the Note to pay the financing costs incurred in conjunction with the issuance of the Note.
- 10. The Director of Finance has been authorized and directed to prepare a Certificate as to Taxes and Revenues to be Collected (the "Certificate") and a calculation of the maximum anticipated cumulative cash flow deficit (the "Cash Flow Calculation Worksheet"), each of which, if prepared and submitted to the Council in accordance with Sections 8122 and 8126 of the Act and in accordance with United States Treasury Regulations, respectively, is hereby approved.
- 11. It is hereby determined that the aggregate principal amount of the Note does not exceed the lesser of: (i) eighty-five percent (85%) of the sum of the taxes and revenues to be collected or received in the 2009 fiscal year during the period when the Note will be outstanding as estimated by the President and Secretary of the City in the Certificate; or (ii) the maximum anticipated cash flow deficit of the City for the 2009 fiscal year, as reported by the President and Secretary of the City in the Cash Flow Calculation Worksheet.
- 12. The Mayor and the City Clerk are hereby authorized to certify to the Purchaser at the time of delivery of the Note that the amount of the Note to remain outstanding will not exceed the limitations of Section 8122 of the Act. A copy of such certificate shall be retained by the City until maturity of the Note.

- 13. The City covenants to comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable regulations promulgated with respect thereto, including, but not limited to, the requirements regarding the use or investment of the proceeds of the Series Note and the rebate requirements in Section 148(f) of the Code.
- The City hereby represents and warrants, after due investigation and to the best of its knowledge, that (i) the Note is not "a private activity bond" within the meaning of Section 141 of the Code; (ii) the aggregate face amount of "gualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code(which includes qualified 501(c)(3) bonds but not any other private activity bonds) issued or to be issued by the City and all other entities which must be aggregated with it pursuant to the Code in the 2009 calendar year, including the Note, is not reasonably expected to exceed \$10,000,000.00. The City hereby designates the Note as a "qualified taxexempt obligation" pursuant to Section 265(b)(3) of the Code (relating to the disallowance of the interest deduction for indebtedness incurred by banks, thrift institutions and other financial institutions to purchase or carry tax-exempt obligations). The City hereby authorizes the proper officers of the City to execute a certificate to that effect at the time of closing. Therefore, the City expects that only twenty percent (20%) of the interest deduction for indebtedness incurred by bank, thrift institutions and other financial institutions to purchase or carry the Note will be denied under Sections 265(b)(1) and 291(e)(1)(B) of the Code.]
- 15. The President or Vice President of Council and the City Clerk are hereby authorized and directed to cause certain documents and proceedings in connection with the authorization, issuance and sale of the Note (including certified copies of this Resolution and the Certificate and a true copy of the Note Purchase Proposal) to be filed with the Department of Community and Economic Development of the Commonwealth of Pennsylvania in accordance with Section 8128 of the Act.
- 16. The City hereby warrants to the Purchaser, its successors and assigns, that it has not encumbered or pledged its anticipated tax receipts or other revenues for the 2009 fiscal year and further covenants that, except for outstanding current operating expenses incurred for the current fiscal year, for the payment of which the Note is being issued and sold, it will not, as long as the principal of or interest on the Note shall remain unpaid, incur any further obligations against such tax receipts or other revenues ranking prior to or on a parity with the Note without the prior written consent of the Purchaser.
- 17. The proper officers of the City are hereby authorized and directed to perform all other actions necessary or desirable for the valid issuance, sale and delivery of the Note in accordance with the Act, the aforesaid proposal of the Purchaser and the provisions of this Resolution.
- 18. All resolutions or parts of resolutions heretofore adopted to the extent that the same are inconsistent in any manner herewith are hereby repealed.
  - 19. This Resolution shall take effect immediately.

DULY ADOPTED, by the City Clerk of the City of Reading, this  $22^{\text{nd}}$  day of December, 2008.

By:President of Council	
ATTEST:	
By:	
City Clerk	(SEAL

**BERKS COUNTY, PENNSYLVANIA** 

**CITY OF READING** 

### EXHIBIT "A" FORM OF NOTE

No TON 1	4	<u> •</u>
No. TRN-1	i	)

# CITY OF READING BERKS COUNTY, PENNSYLVANIA UNITED STATES OF AMERICA COMMONWEALTH OF PENNSYLVANIA

#### **TAX AND REVENUE ANTICIPATION NOTE -- SERIES OF 2009**

City of Reading, Berks County, Commonwealth of Penn	sylvania (the "Issuer"), for value
received, hereby promises to pay to Wachovia Bank, National	Association (the "Bank"), the
registered owner hereof, the sum of Dollars (\$_	), on the 31st day of
December, 2009, together with interest on said sum from the 2	
maturity (at the annual rate of and	
and based on 360-day year of twelve, thirty-day months). Both	the principal of and interest on this
Note shall be payable in such coin or currency as at the place	and at the time of payment shall be
legal tender for the payment of public and private debts in the	Jnited States (or by instrument
payable in immediately available legal tender as aforesaid), at	the office of Wachovia Bank,
National Association (the "Sinking Fund Depositary"), in Readi	ng, Pennsylvania.
This Note is the Toy and Davanus Antisination Note Co	wise of 2000 southerwised and issued
This Note is the Tax and Revenue Anticipation Note, Se	
in the aggregate principal amount of Dollars	(\$) (the Note), in
accordance with the provisions of the Local Government Unit I	
Pennsylvania, as codified by the Act of December 19, 1996, (F	· /·
(the "Act"), and pursuant to a resolution adopted on December	
the Issuer (the "Resolution") and filed, together with other requ	
Pennsylvania Department of Community and Economic Develo	•
and the Resolution for a complete statement of the rights and I	•
Note, to all of which the holder hereof by acceptance of this No	ote assents.

This Note is issued under and in accordance with the Act, for the purpose of providing funds for current expenses payable in the current fiscal year in anticipation of the receipt of taxes and other revenues by the Issuer from the date of original delivery of the Note to the stated maturity date thereof.

This Note is equally and ratably secured with all other Note issued under the Resolution by the pledge of, security interest in and a lien and charge on the taxes and other revenues of the Issuer specified in the Resolution to be received during the period when the Note is outstanding. Such pledge, security interest, lien and charge have been perfected and are enforceable in the manner provided by the Act. The Note is a general credit obligation of the Issuer.

The Issuer covenants that it will deposit in the sinking fund for the Note established by the Resolution with the Sinking Fund Depositary the taxes and other revenues collected in amounts which will be sufficient to pay the principal of and interest on all notes issued pursuant to the Resolution as and when the same shall become due and payable, and such sinking fund shall be applied exclusively to such purpose.

The Issuer covenants that it will not make any use of the proceeds of the Note or do or suffer any other action which would cause the Note to be an "arbitrage bond" as such term is defined in Section 148 of the Internal Revenue Code of 1986, as amended, and all applicable regulations thereunder (the "Code").

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This Note shall not be prepayable at any time in whole or in part.

[In the Resolution, the Issuer has designated the Note as a "qualified tax exempt obligation," within the meaning of, and in accordance with, Section 265(b) of the Code.]

All acts, conditions and things required to be done or performed precedent to and in the issuance of this Note or in the creation of the obligation of which this Note is evidence have been done and performed as required by law.

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IN WITNESS WHEREOF, the City of Reading, Berks County, Pennsylvania, has caused this Note to be signed in its name and on its behalf by the signature of the Mayor of the City of Reading, and its seal to be hereunto impressed, duly attested by the signature of the City Clerk, this 2nd day of January, 2009.

CITY OF READING	
BERKS COUNTY, PENNSYLVANIA	

By:		
Ma	yor	
Attest:		
	City Clerk	(SEAL)

### **REGISTRATION RECORD**

Date of	Registration	Nam	ne of Registered Owner	Registrar egistered By Authorized Representative of Paying Agent)
	January 2, 2009		Wachovia Bank, National Association	

### **ASSIGNMENT**

	FOR VALUE RECEIVED,s and transfers unto		hereby sells,
-	Name	_(the "Transferee")	
-	Address	-	
all right attorne	Social Security or Federal Employer Identification Ness thereunder and hereby irrevocably constitutes and to transfer the within Note on the books kept for rution in the premises.	d appoints	_ the within Note and  with full power of
Date: _			

NOTICE: No transfer will be issued in the name of the Transferee unless the signature(s) to this assignment correspond(s) with the name as it appears upon the fact of the within Note in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied. If the Transferee is a trust, the names and Social Security or Federal Employer Identification Numbers of the settlor and beneficiaries of the trust, the Federal Employer Identification Number and date of the trust, and the name of the trustee should be supplied.







### M E M O R A N D U M

**TO:** Managing Director

FROM: Vaughn D. Spencer, President of Council

**Public Works Committee** 

DATE: October 2, 2008

**SUBJECT:** East Ends Lease Agreement

At their September 15<sup>th</sup> meeting the Public Works Committee discussed the current lease arrangement with the East Ends Association. The contract expired a few years ago and the Committee and I request that you and the Solicitor immediately begin to renegotiate this lease agreement. A copy of the brief prepared by Council staff is attached along with the Public Works meeting report. We ask that you be prepared to provide reports on the negotiation process at each Public Works Committee meeting.





Agenda Item: East Ends From: Linda A. Kelleher

City Clerk

**Briefing No.:** 4-2008 **Date:** August 28, 2008

**SUBJECT:** East Ends Social Club located in Mineral Spring Park.

<u>BACKGROUND</u>: This building was constructed in 1812 for use as a woolen mill, which is why it was located beside Rose Creek. There was a large water-wheel in the basement. People used to gather by the hundreds to view the amazing machinery in operation through the windows. There was a huge milling dam on the Perkiomen Avenue side that for a period was used as a water supply for Reading

The milling operation ceased and all machinery was removed. **The building was converted to a resort hotel in 1814** and hosted large political rallies and other events. Presidential candidates often visited this site. This was one of the first "mineral cure" hotels in the United States. Many people came to stay at the hotel, some for the entire summer. Health conscious tourists were drawn to the mineral spring contained in an open-sided Victorian gazebo. It was not unusual for the park to have over 1,000 visitors on a Sunday afternoon. The proprietors of the Reading Eagle once held title to this property and operated the hotel. The gravity railroad opened around 1890 and its station was a short distance away.

After Prohibition and the Depression, the hotel closed down. It was vacant for several years. To provide a presence, the **City rented this building to East Ends in 1937** for social use and to benefit athletic programs for youth. East Ends has occupied the building ever since. The Historical Society suggests that this building go on the National Register of Historic Sites.

With the help of the County Assessment Office we learned that at one time, the **building was listed as a commercial building and was assessed at \$243,000**. The building is 9,384 square feet. In 1994 the City filed for a reduction. The reduction was denied by the Assessment Board and the City appealed to the Court of Common Pleas. The City won this legal battle and the **court reduced the assessment to \$150,000 (court case 6289-1994).** 

The Assessment Office also reported that on **October 22, 2002 the building was provided with exempt status by the Assessment Board**. They could not determine from their records who filed the application.

**LEASE AGREEMENTS:** Our records show the first formal lease agreement with East Ends ran from 1974 through 1979 and the second running from 1996 through 2001.

The **1974-79 lease agreement** contained provisions for monthly rental payments of \$125 and required payment of utilities and real estate taxes. Through conversations with former City officials we learned that utility costs were billed to the City and forwarded to and paid by East Ends. The City paid the property taxes but it is uncertain if East Ends ever reimbursed the City.

During **the 1996 negotiations** it was discovered that utility payments were not always reimbursed by East Ends and that the City still provided trash collection. It was also discovered that the property taxes paid by the City were not reimbursed by East Ends. During negotiations the City made it clear that East Ends needed to have the utilities switched over to their organization. East Ends was also advised that maintenance of the facility and trash collection was their responsibility.

The **1996-2001 lease agreement** raises the monthly rent payment to \$500, payable to the Finance Director's Office or his designee. This agreement also requires the Lessee to promptly remit property taxes levied on the property. The lease also requires the Lessee to maintain, repair and plow the access road from the point depicted on Exhibit A.

The lease, which expired in 2001, contains an optional 5 year renewable clause that was not exercised by the City or East Ends. The lease also allows the City to terminate the lease by providing 180 day notice if the City "decides in its sole discretion that the premises are needed for or to further the exercise of its municipal powers for the benefit of the public." It also provides that if any term of the lease is in arrears, is unpaid, or if the said Lessee underlets or stops using the premise for a private club without obtaining written consent from the City, the City may file eviction proceedings with the Courts.

The lease also states that "all goods on the premise shall be liable to distress in the event rent, utilities, property taxes are unpaid and if rubbish, trash are not removed from the premise and grounds and for non-fulfillment of and covenants herein contained. In the event the Lessee desires an assessment appeal, the Lessor will provide legal assistance with any and all costs reimbursed."

<u>UTILITY & OTHER PAYMENTS:</u> RAWA confirmed that East Ends pays their monthly water/sewer bills. Public Works has confirmed that the electric service has been changed to East Ends. Tax confirmed that East Ends has a business license and remits proper payments. Codes confirmed that East Ends has a current Health Permit.

<u>ATTACHMENTS</u>: 1974-79 and 1996-2001 Lease Agreements; Park and Rec Plan information on property

### Public Works Committee FY 2008 GOALS AND OBJECTIVES

### GOAL 1: REVIEW AND RECOMMEND FOR ADOPTION A STORMWATER MANAGEMENT ORDINANCE TO COMPLY WITH PADEP REGULATIONS.

### GOAL 2: EVALUATE CONTRACTS FOR LINE PAINTING AND TRAFFIC SIGNAL AND STREETLIGHT MAINTENANCE.

- Ensure the Public Works Department prepares specifications and awards contracts to the lowest responsible bidders, for the maintenance of essential operations.
- Develop areas, based on concerns related to individual Council Districts, requiring streetlight maintenance.

### GOAL 3: REPAVE/RECONSTRUCT CITY STREETS/MAINTAIN CURBING AND SIDEWALKS

- Determine the most effective method of developing and implementing a citywide street reconstruction and repaying program.
- Develop priorities for street repaving and reconstruction.
- Identify, based on Council Districts, in need of infrastructure improvements.

### GOAL 4: COMPLETE ENGINEERING PLAN REVIEWS FOR PROPOSED DEVELOPMENT SITES.

 Ensure the Public Works Committee receives regular updates regarding development projects.

#### GOAL 5: ADDRESS THE CLEANLINESS OF CITY STREETS

• Evaluate current sweeping program procedures in an attempt to improve operations.

#### GOAL 6: BEAUTIFICATION/MAINTENANCE/EXPANSION OF THE PARKS SYSTEM

- Identify necessary, amongst the existing park system, necessary aesthetic improvements and prioritize improvements.
- Receive regular updates on the implementation of the City Park Master Plan and improvements to the Pagoda.

#### GOAL 7: RENOVATIONS TO CITY FACILITIES.

Ensure improvements to City facilities are completed in a timely manner.

### GOAL 8: ENSURE TIMELY IMPLEMENTATION OF CAPITAL IMPROVEMENTS PLAN PROJECTS

 Monitor CIP projects and receive regular status report from Public Works Director and Managing Director.

### GOAL 9: STRENGTHEN RECREATION ACTIVITIES AND PROGRAMS AS A WHOLE.

- Improve, through amendment, the existing Park and Recreation Advisory Council ordinance.
- Discuss opportunities of expanding recreation opportunities through partnering with other organizations and the community.
- Work with other external recreation providers to coordinate programs and activities
- Identify more effective methods of providing recreation opportunities to a larger segment of the community.
- Consider expanding the Park Security Program.

# GOAL 10: RECEIVE REGULAR UPDATES ON COMPLIANCE WITH ALL WASTE WATER PERMIT REQUIREMENTS (NPDES AND Air Quality) AND WASTE WATER TREATMENT PLANT OPERATIONS.

### GOAL 11: REVIEW CONSENT ORDER AND OPERATION AND MAINTENANCE PLAN SCHEDULE

- Begin and continue reviewing the implementation of the wastewater treatment plant design and schedule including periodic updating of financial estimates.
- Approve Consent Decree timeline.
- Receive regular and complete financial updates

#### **GOAL 12: CREATE STORMWATER UTILITY**

- Review financial impact analysis.
- Develop legislation for review and adoption by City Council.

#### GOAL 13: MONITOR SOLID WASTE AND RECYCLING OPERATIONS

- Determine if improvements to the existing ordinance are necessary.
- Assist with the development of an education and enforcement campaign for all city residents on proper set out requirements for all municipal solid waste and recyclables.